

Rebecca Gallagher
Pro se creditor
January 20, 2023

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	
)	Chapter 11
)	
CELSIUS NETWORK LLC, <i>et al</i> , ¹)	Case No. 22-10964 (MG)
)	
Debtors.)	(Jointly Administered.)

**REBECCA GALLAGHER’S RESPONSE TO THE DEBTORS’ OMNIBUS OBJECTION
[DOC. NO. 1872] TO HER MOTION SET FOR THE JANUARY 24, 2023 OMNIBUS
HEARING FOR ENTRY OF AN ORDER (I) ESTABLISHING OWNERSHIP OF ASSETS
IN THE EARN PROGRAM, (II) PERMITTING THE SALE OF STABLECOINS IN THE
ORDINARY COURSE AND (III) GRANTING RELATED RELIEF [DOC NO 1508]**

The above-captioned debtors and debtors in possession (collectively, the “Debtors” and together with their non-debtor affiliates, collectively, “Celsius”) filed an omnibus objection (the “Objection”) to certain motions (the “Motions”) to be heard at the January 24, 2023 hearing before the United States Bankruptcy Court for the Southern District of New York (the “Court”).

I, Rebecca Gallagher, had filed one of these motions, namely Doc No. 1508, on November 29, 2022. It was originally anticipated the Motion would be heard at the December 5, 2022 Earn hearing, but the November 11 filing deadline was missed due to Veterans Day court closures. It was then scheduled for December 20, 2022, but was adjourned by the court to the January 24, 2023 hearing because of scheduling issues. In the meantime a Memorandum Opinion and Order Regarding Ownership of Earn Account Assets [Doc No. 1822] was entered on January 4, 2023. Notwithstanding this order being entered, Judge Glenn graciously agreed to let me be heard. I therefore wish to address the Debtor’s contention that my Motion failed to meet the heightened standards required to bring claims of fraudulent inducement and unconscionability. I seek to reach these heightened standards so that my Motion will be heard and the relief requested granted.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Celsius Network LLC (2148); Celsius KeyFi LLC (4414); Celsius Lending LLC (8417); Celsius Mining LLC (1387); Celsius Network Inc. (1219); Celsius Network Limited (8554); Celsius Networks Lending LLC (3390); Celsius US Holding LLC (7956); GK8 Ltd. (1209); GK8 UK Limited (0893);

and GK8 USA LLC (9450). The location of Debtor Celsius Network LLC's principal place of business and the Debtors' service address in these chapter 11 cases is 50 Harrison Street, Suite 209F, Hoboken, New Jersey 07030.

1. Fraudulent Inducement into Contract

As pointed out by the Debtors' Objection, to state a claim for fraudulent inducement under New York law, a plaintiff must allege: "a representation of fact, which is untrue and either known by defendant to be untrue or recklessly made, which is offered to deceive and to induce the other party to act upon it, and which causes injury." A claim for fraudulent inducement must satisfy the heightened pleading requirement of Federal Rule Civil Procedure 9(b), which requires that a party "state with particularity the circumstances constituting fraud." *PetEdge, Inc. v. Garg*, 234 F. Supp. 3d 477, 490 (S.D.N.Y. 2017).

Alex Mashinsky stated loudly, repeatedly and publicly that Celsius was a safe, low-risk, regulatory compliant place to send crypto assets to earn yield when in fact they were operating as a high risk, unregulated hedge fund. Celsius claimed to treat customers better than a Bank and made the particular representation that they were regulatory compliant, when they knew this to be untrue. "We operate in over 100 countries, we don't have a single issue with a single regulator in a single country because we follow the rules" ([Exhibit A: Real Vision Interview April 18th 2021, Timestamp 41 min](#)) "Celsius from day one, one of the first things we did... was register with the SEC, register with FINCEN, deliver our White Paper, explain to everyone what we are doing. ([Exhibit A: Timestamp 36:22 mins](#)) "We didn't know if our coin was a security or not so we filed with the SEC." ([Exhibit A: Timestamp 40:04 mins](#))

These statements were untrue, deliberately deceived and induced me to deposit my funds. Celsius did not have the licenses to offer legal securities (Earn), legal storage (Custody), legal Rehypothecation (Banking), legal trading (Money Transmission) and legal collateralized loans (Lending) inside or outside the US.

As of the Petition Date, at least 40 state securities regulators were engaged in a multi state investigation arising from, inter alia, concerns about potential unregistered securities activity, mismanagement, securities fraud, and market manipulation by Celsius and its principals. The State of New Jersey issued a cease and desist order that was originally to take effect in December 2021 and shut down the entire US Earn operation. As we learned from the [Examiner's Interim Report, \[Doc No 1411\]](#) the order kept being pushed back as Celsius scrambled, behind the scenes, to come up with a solution. Ultimately the order went into effect in April 2022 and resulted in the hastily created Custody program, sprung upon US customers with four days notice. It was a diabolical move designed, as the Examiner's Interim Report revealed, to deliberately keep customer assets on the platform, rather than come clean and return them where appropriate; the honorable and ethical approach. We also learnt from the Report that Custody was a legal fiction, a manufactured distinction. There was no true custody going on, it was not a compliant product, and funds were commingled with Earn and Loan assets. Celsius deliberately and recklessly conspired to deceive by hiding the true facts from customers. As an uncredited investor, unable to bear the financial risks of Earn, I should have been placed in the Custody program. This would have been truly acting, as Celsius always claimed to do, in "customer best interests." Instead Celsius deceptively incentivized me to remain in the totally unsuitable and risky Earn program by saying if coins were removed they could never be returned to earn yield

again. I was thereby fraudulently incentivized to send an additional \$20,000 USDC right before the cut off as it was the “last chance.” I was relying on the continuation of the \$1000.00 a-week yield for retirement. Critical material information about the risks involved were not disclosed.

2. Fraudulent Misrepresentation

Celsius deliberately made many materially false representations about its activities and the safety of my funds that have caused me great harm. In particular it portrayed itself as safer than a bank; as low-risk; as always having enough liquidity for withdrawals (1); as making only carefully vetted over collateralized loans (2); as never taking risky bets (3); as never participating in naked shorts (4); as only having a 10% exposure to defi (5); as always acting in the best interests of customers (6); as having military grade security; as being delta neutral (7); as taking full responsibility if anything went wrong (8). All these specific and particular statements that Alex would repeatedly make proved to be false, as the evidence below shows beyond a shadow of a doubt.

- (1) “A run on the bank cannot happen to Celsius, because Celsius never lends more than what it has. So any moment we always have enough coins and enough collateral, and so on, to return all the assets to all of our users “ [Alex Mashinsky, April 30, 2022 AMA](https://www.youtube.com/watch?v=3hq4jT7CXkk&t=61s)
<https://www.youtube.com/watch?v=3hq4jT7CXkk&t=61s>

Reality: We experienced just such a run on the bank shortly after this statement was recklessly made. This resulted in Celsius entering Chapter 11 on July 13, 2022. Customer funds have remained locked on the platform since June 12, 2022. Customer funds are now being hijacked to pay for Celsius’ attorneys. Chapter 11 protection is the only process that I know of where the victims that got scammed have to pay the legal fees to protect the company that scammed them. Customers are being forced to fund what appears to be a phantom reorganization plan. At the December 5, 2022 hearing we heard from regulators that they had yet to be approached about any such reorganization by the Debtors and that it could take up to two years to get the necessary licenses in place in order to proceed with said reorganization.

- (2) “We have 3 times the assets that we hold, against what we lend out, so the risk is very low. So if we need to liquidate we just liquidate.” ([Exhibit A, Timestamp 26 mins onwards](#))

Reality: As per Stretto Doc 1818 we learnt that Celsius currently has 14 institutional borrowers with outstanding aggregate loans totaling approximately \$115 million, secured with a paltry \$16 million in collateral. This is patently severely under collateralized, high risk, and makes the possibility of repayment slim. As for retail loan collateral, this was rehypothecated along with Earn’s funds and much of it has been lost.

- (3) “Our job is effectively to be the shepherd’s here. To keep people away from taking these real risky bets and find the places where you can earn good yield and not take a lot of risk. That’s what we do better than anybody else in crypto.” ([Exhibit A: Timestamp 29 mins](#))

Reality: Celsius was taking more risks than its depositors realized. According to insider Anastasia Golovina, Celsius was making uncollateralized loans, investing deposits in perpetual swaps, futures-like contracts with no expiry date, and other high risk practices.

See “What Crypto Lender Celsius Isn’t Telling Its Depositors” <https://www.coindesk.com/business/2020/07/28/what-crypto-lender-celsius-isnt-telling-its-depositors/>

We learned from the Jason Stone hearing on January 11 & 12, 2023 just how much exposure to risk in Defi was being taken, and the horrifying fact that no one was hedging these risks.

(4) “The borrowers give us collateral, these are not naked loans.”

(Exhibit A, Timestamp 24 mins)

Reality: See No (2) above.

(5) “We have maybe 10% of our assets in Defi” (Exhibit A, Timestamp 28mins)

Reality: See Jason Stone hearing January 11 & 12 2023 as evidence that this was not true.

(6) “We always act in the best interests of our depositors. Again I am the largest depositor so it’s easy for me to act in my own best interest.” (Exhibit A: Timestamp 50:56 mins)

Reality: Working to distribute back assets from the beginning would have been acting in depositors’ best interests. Not holding us hostage for 7 months in this charade of exclusivity whilst slowly draining us dry. Removing all your own funds and squirreling them away out of reach of the court is not acting in the best interests of depositors.

(7) We are what is called delta neutral... we operate with a delta neutral strategy. Celsius does not bet if the market will go up or down or not. Our job is to take advantage of the difference in prices say between future and spot”

Exhibit B: Paris Blockchain Week Summit, CNBC, Arjun Kharpal Interview with Mashinsky, 2 months before bankruptcy.

Reality: See Anastasia Golovina interview and the Jason Stone hearing above.

(8) “Celsius takes full responsibility, if anything goes bad we take full responsibility. That is part of why we raised the \$750 million.” (Exhibit C: Timestamp 1:04:17)

“Celsius has 2 billion on their balance sheet, we have more than anybody else.”

(Exhibit C, Timestamp 1:04:29)

Exhibit C, Celsius AMA, December 10th 2021, Live from Real Vision Conference in Vegas.
<https://youtube.com/clip/UgkxcIRkVP3cL1A7d55Rj9xoWX2BSNfcwOfR>

Reality Instead of taking full responsibility, the founders ran for the hills with their own funds, filed for Chapter 11 protection against the consequences of their actions, and left the rest of us to watch our funds slowly and painfully dwindle away funding these proceedings.

Founder and CEO Alex Mashinsky and his wife Krissy; Co Founder S. Daniel Leon; former CFO Rod Bolger; CRO Roni Cohen Pavon; Nuke Goldstein, and other insiders unjustly enriched themselves using customer funds. Through the manipulation of CEL token they created exit liquidity in USD and covered up losses and fraud. Block Chain analysts have traced these activities and transactions and exposed them. Alex Mashinsky sold \$40,000,000 USD of CEL token in 2021 alone, when Celsius Network was aware of a hole in the balance sheet. (See Doc 1112 page 8 entered on 10/18/22.) After a board meeting on May 2, 2021, where it was stated in the minutes that Celsius had zero liquidity, there was a giant uptick in withdrawals from senior management insiders right up until the pause. Alex Mashinsky withdrew \$10m gross in the 90 days prior to bankruptcy leaving only dust and useless CEL token on the platform. Daniel León

\$5m and borrowed \$4m as per the Celsius Hearing of 10/13/22. These insiders were able to enrich themselves leaving customers like me unable to access our funds. These transactions have been detailed and exposed by Keith @ChazzonKe, Mike Burgersburg of Dirty Bubble Media, Coffeezilla and CamCrews, to name just a few fully documented sources.

Whilst knowing they were insolvent, and under cease and desist orders, Celsius continued to advertise promo codes and deals to try and coerce me and others into sending money. This can only be seen as a deliberate attempt “to deceive and to induce the other party to act” to their harm. It gave the false impression that everything was ok and funds were safe. It caused me to ignore the nay sayers who were warning people to withdraw their funds. On May 29, 2022 Alex Mashinsky Tweeted that he would personally give one new user \$1000.00 for opening an account. (See Exhibit D).

In a YouTube interview with Invest Answers ten days before the pause, Alex Mashinsky was asked pointedly, and in particular, the following: “The number one question from people is “Are our funds safe at Celsius?” Can you address that for the audience?” Alex replied: “Yes, so not just that they are safe, but we provide anyone who wants, to withdraw partially or fully, there are no problems.” This statement was clearly known by Alex Mashinsky, at the time of making it, to be untrue. It was offered to deliberately deceive and to induce customers like myself into leaving their funds on the platform. This has caused great financial injury to myself and my family.

<https://twitter.com/crypthunter0x/status/1549849069497065474?s=20&t=QCctjxKhO3hncTiXUZGrSw>

On June 10 2022, just two days before the pause, during the weekly AMA, Alex Mashinsky knowingly made the completely fraudulent statement: “Celsius has billions in liquidity, we provide immediate access to anyone who needs access to the liquidity. That includes institutions and that includes people who want to get their coins back” (AMA June 10, 2022 Timestamp 9 mins) Two days later they paused all withdrawals as there was zero liquidity left, leaving my life savings trapped on the platform.

During the time period I was transferring assets to Celsius, not only were the risks totally misrepresented, mistakes were covered over. The private keys to millions of dollars of ETH were lost; Celsius was severely impacted by the Badger DAO hack yet claimed the loss negligible; Celsius let a Tether loan be liquidated costing a large percentage of their bitcoin holdings. All told Celsius lost/squandered 60,000 customer bitcoin whilst claiming to have not lost any in May 2022. (See Exhibit E); The Equities First loan became a fiasco and may never be paid back.

When they exited the UK to avoid regulators and the unfavorable UK bankruptcy terms, they changed the TOS prior to give themselves favorable treatment under the US Chapter 11 process, and the right to use customer funds with impunity to purchase a mining operation and GK8 at suspiciously over-inflated prices. It would appear the inflated price paid for GK8 was a way of exiting funds to Israel for the founders, Daniel Leon was made CEO. They entrusted the private keys to millions of dollars of customer funds to Jason Stone, with no proper contract in place, and then left him with access to the wallet after he had resigned. These funds were exposed to reckless, highly risky, unhedged bets in Defi Trading. Customer funds were used to purchase

NFTs that were then transferred to Stone's personal wallet. (See Stone hearing of January 11 and 12, 2023)

3. Unconscionability and Fraudulent Conveyance of Contract

A finding of unconscionability requires evidence of exceptional facts and circumstances. Under New York law, an unconscionable contract is one which "is so grossly unreasonable or unconscionable in the light of the mores and business practices of the time and place as to be unenforceable according to its literal terms." *Gillman v. Chase Manhattan Bank, N.A.*, 534 N.E.2d 824, 828 (N.Y. 1988). Unconscionability generally requires that the contract was both procedurally and substantively unconscionable at the time of formation—i.e., "some showing of an 'absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party.'"

Celsius engaged in deceptive, and unfair business practices regarding their terms of service (TOS). Whilst outwardly making lofty promises and representations in public forums such as the weekly AMAs and interviews, proclaiming that coins remained customer property, Celsius hid unusual, and adverse terms deep in the fine print and did not alert customers to this fact when notifying us the TOS had changed. Alex Mashinsky made countless statements over many years and right up to the pause, referring to the coins we deposited as "your coins" and gave me no cause to doubt this.

For example, before sending my live savings I watched and relied on this particular YouTube video: "So when you give us bitcoin it's not like it's ours right it's yours legally, it is still your bitcoin. The only thing we do is, when you lend us your bitcoin, we lend them to people who pay us interest. When they return them, it goes back to the wallet and it's still yours..."

- Alex Mashinsky Time: 1:16:30 - 1:17:04 - 24 Jul 2020.

<https://twitter.com/astrojoe001/status/1598412824505913344?s=20&t=qeLeUbeCqH5xtfjsjBXy1Q>

Whereas there were a multitude of statements in the TOS referring to customer coins as open ended "loans" to Celsius, that could be terminated at any time and the coins returned, they used one sentence to gain ownership of our coins "you grant Celsius, ... for the duration of the period during which the Eligible Digital Assets are loaned to us through your Celsius Account, all right and title to such Digital Assets, including ownership rights." This huge material change was obfuscated when it was introduced. I was sent an email in July 2021 advising me of changes to the TOS. The email intentionally deceived by omitting to mention transfer of coin ownership as a main change to TOS version 6. The email stated only three main changes; the transfer from a UK Ltd company to a US Delaware LLC, the relationship would now be governed by NY Law, and disputes would be settled by arbitration.

This can only be described as an unconscionable contract, that is to say a contract which is so unfair to one of the parties that no reasonable or informed person would agree to it. Substantive unconscionability is indicated by contract terms so one-sided as to shock the conscience. It consists of an allocation of risks or costs which is overly harsh or one-sided and is not justified by the circumstances in which the contract was made.

If the Terms of Use are interpreted to mean what Celsius claim them to mean, then they constitute the epitome of substantive unconscionability. There is no question that such an interpretation of the Terms of Use would result in the terms being unreasonably favorable to one party, and the allocation of risk or costs completely one-sided favoring Celsius to the complete detriment of users. The idea that a person such as myself, an unaccredited investor, would give hundreds of thousands of dollars of assets to Celsius in exchange for a "fee" and subject my assets to complete loss at any time is patently unconscionable. It also constitutes a fraudulent conveyance, defined as the illegal or unfair transfer of property to another party, to defraud or put property out of the reach of a creditor in anticipation of, or during, bankruptcy proceedings according to the Uniform Voidable Transactions Act and the federal Bankruptcy Code.

I am not the only person to take this view. NYAG Letitia James filed a lawsuit against Alex Mashinsky on January 5, 2023, I agree whole heartedly with the allegations that she made against Alex Mashinsky. That he lied to investors, concealed Celsius's dire financial condition, and failed to register as required by State Law.

<https://ag.ny.gov/press-release/2023/attorney-general-james-sues-former-ceo-celsius-cryptocurrency-platform-defrauding>

[Full filing here https://ag.ny.gov/sites/default/files/mashinsky_complaint.pdf](https://ag.ny.gov/sites/default/files/mashinsky_complaint.pdf)

Notice

Notice of this Objection has been served on counsel to the Debtors, the Office of the United States Trustee, and Counsel to the Committee and the Ad Hoc Groups, and all other parties who have requested notice in these cases pursuant to Bankruptcy Rule 2002. Under the Circumstances, I submit that such notice is adequate and sufficient, and that no other or further notice is required.

Conclusion

As a senior, out of the work force, with a disabled husband, I am not in a position to earn back the assets that sit on the Celsius platform. They represent a lifetime's money which I need now for my retirement, not months down the road after more value has been eroded. In the 7 months since the pause I have suffered tremendous financial harm as a result of the Debtors actions; there was no Christmas this year, we are eating from a Food Bank and cannot properly heat the house in the sub zero conditions experienced this winter.

WHEREFORE, I respectfully request that the Court give special consideration because of my age and the adverse circumstances I find myself in, and order the release of what is left of my assets before they are further dissipated by this process.

Dickson Tennessee
Dated: January 20, 2023

Respectfully submitted,
By /s/ Rebecca Gallagher
Pro Se

Exhibits

Exhibit A : Real Vision Interview Ash Bennington and Alex Mashinsky April 18, 2021



Exhibit B : Paris Blockchain Week Summit, CNBC, Arjun Kharpal Interview



Exhibit C :

Celsius AMA, December 10, 2021, Live from Real Vision Conference Vegas.



Exhibit D

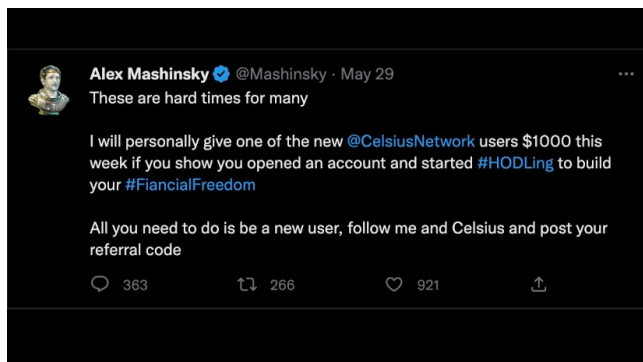


Exhibit E

